IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1946 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BARODA RAYON CORPORATION LTD. - Petitioner(s)
Versus
BEST CARRIERS - Respondent(s)

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Appearance :
MS AMRITA M THAKORE for Petitioner(s) : 1,
MR RS SANJANWALA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/03/2007

ORAL JUDGMENT

Heard Ms.Amrita Thakore for the petitioner and learned advocate Shri Sanjanwala for the respondent.

2. The petitioner herein has challenged the order dated 30th December 2005 passed by the 4th Additional Senior Civil Judge, Surat below Ex.7 in Summary Suit No.31/03.

3. Shortly stated, facts leading to the present petition are that the petitioner was the original defendant in the said summary suit instituted by the respondent herein. Before the Trial Court, the petitioner herein filed an application on 4th February 2004 contending, inter alia, that the case of the petitioner is pending before the BIFR and that therefore, the suit should not be proceeded further. It was on this application that the Trial Court passed the impugned order. While rejecting the request of the petitioner to stay the further proceedings of the suit, the Trial Court was of the opinion that though an application under section 15(1)of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the SICA") has been filed by the petitioner proceedings under section 16 or 17 of the SICA have not yet been commenced. Relying on the provisions contained in section 22 of the SICA, the learned Judge was of the opinion that the proceedings can be stayed only if an inquiry under section 16 is pending or any scheme under section 17 is under preparation or consideration or a sanctioned scheme is under implementation. The learned Judge was of the opinion that the petitioner had filed an application

under section 15(1)of the said Act and the same cannot be equated with pendency of an inquiry under section 16 or a scheme under section 17 of the SICA.

4. Learned advocate Ms.Thakore for the petitioner has relied upon the decisions of the Apex Court in the case of **Real Value Applicances v. Canara Bank**, (1998) 5 SCC 554 and in the case of **Rishab Agro Industries Ltd. v. PNB Capital Services Ltd.** (2000) 5 SCC 515 to contend that once an application under section 15 is scrutinized inquiry under section 16 of the SICA can be said to have commenced as soon as registration of reference is complete after scrutiny. Additionally, it was also stated before the Court that since the Trial Court passed the impugned order, BIFR has already approved a scheme for rehabilitation of the petitioner company.

5. In view of this development, it is not necessary to examine the legal issue on which the learned Judge was pleased to reject the application for stay of the proceedings filed by the petitioner. Now that the approved scheme is in existence, in any case, bar under section 22 of the SICA would apply and further proceedings cannot continue.

6. In view of the above development, the impugned order is quashed. It is directed that the summary suit shall not proceed further till the bar provided under section 22 of the SICA is in force.

The petition is accordingly allowed and disposed of. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)